IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 291 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

CIBATUL LTD

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Appearance:

1. INCOME TAX REFERENCE No. 291 of 1987
NOTICE SERVED for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1
MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 01/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following two questions have been referred to this Court for its opinion under the provisions of Section 256 (1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by Income Tax Appellate Tribunal, Ahmedabad bench `A'.

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that while considering the disallowance u/s. 40 (c) the medical benefits paid to the managing directors is to be considered?"

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that while disallowing travelling expenses under Rule 6D of the I.T. Rules, all the tours undertaken by a person during the year should first be grouped and then limits laid down in Rule 6D should be applied?"

2. Learned advocate Shri Bharat Naik has appeared for the applicant and learned advocate Shri Manish J. Shah has appeared for the respondent-assessee.

3. During the pendency of this reference, both the questions have been answered by this Court. It has been held by this Court in Ambica Mills Ltd. v. Commissioner of Income Tax, 235 I.T.R. 264, that while considering disallowance under Section 40 (c) of the Act, the medical benefits given to the managing director are to be taken into account. Looking to the law laid down by this Court in the said judgment, we answer the first question in the affirmative i.e. against the assessee and in favour of the revenue.

4. So far as the second question is concerned, after considering several judgments delivered by different High Courts, in the Income Tax Reference No.54/88 this Court has come to a conclusion that all the tours undertaken by the employee are not to be grouped together for the purpose of considering the disallowance under the provisions of Rule 6D of the Income Tax Rules. It has been held in the said case that the limits prescribed in the said Rule are to be applied with reference to each

trip of the employee. Looking to the said judgment, we answer the second question in the negative i.e., in favour of the revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

1.8.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)

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